Filed 8/20/19 W.C. v. Superior Court CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

W.C., Petitioner, v. THE SUPERIOR COURT OF SONOMA COUNTY, Respondent; SONOMA COUNTY HUMAN SERVICES DEPARTMENT et al., Real Parties in Interest.	A157287 (Sonoma County Super. Ct. No. 5610DEP)

W.C., the mother of baby D.C., petitions under California Rules of Court, rule 8.542 to vacate a trial court order bypassing reunification services and setting a hearing under Welfare and Institutions Code section 366.26.[1] The court found under section 361.5, subdivision (b)(2) that Mother was incapable of utilizing services due to her mental disability and that she was unlikely to be capable of caring for D.C. within the statutory time limits. Mother contends the court erred because it relied on psychological evaluations that were outdated and rebutted by testimony about Mother's efforts to improve her situation and her relationship with her daughter. The order is supported by substantial evidence. We deny the petition on its merits.

[1] All further statutory references are to the Welfare and Institutions Code.

BACKGROUND

The following discussion is focused on the evidence relevant to the court's decision to bypass unification services and therefore does not attempt to address all of the testimony and documentary evidence introduced in the juvenile court.

Jurisdiction

In August 2018, the Sonoma County Human Services Department (the Department) filed a juvenile dependency petition on behalf of then four-day old D.C. The petition alleged the baby girl was suffering or at substantial risk of suffering serious physical harm due to Mother's substance abuse, mental illness, and violent relationship with the alleged father. D.C. was placed with her maternal grandmother, who is the guardian for Mother's three sons.

The Department's amended petition stated allegations pursuant to section 300, subdivisions (b), (c) and (j). The section 300, subdivision (b) count alleged as follows:

"b-1: the infant, [D.C.] is at substantial risk of suffering serious physical harm in the care of [Mother], to wit: the mother suffers from chronic mental health conditions for which she is not receiving treatment. She has received various diagnoses including Post Traumatic Stress Disorder, Bi-Polar Disorder, Anxiety, and Schizophrenia. Two psychological evaluations, completed in 2017, found that she was unlikely to benefit from services within the mandated time frame for reunification with the infant's older maternal half-siblings. The mother exhibits mental health symptoms which inhibit her ability to keep the infant safe. The mother routinely escalates into angry tirades with the professionals who are attempting to work with her, and as a result, is not always able to access needed services. At the beginning of the pregnancy the mother failed to obtain food stamps and did not get enough to eat to the point she was starving; this impacted the development of the infant who was subsequently born small for gestational age. She failed to obtain adequate prenatal care and did not always follow recommendations. On or about the night of August 24, 2018, the mother screamed and verbally abused hospital staff attempting to care for the infant. The mother has been argumentative and oppositional with law enforcement who have responded to numerous

complaints of domestic violence involving the mother and the alleged father. The mother used marijuana during the pregnancy and tested positive for marijuana on or about July 29, 2018.

"b-2: The alleged father, [Father], knew or should have known of the mother's ongoing mental health and substance abuse issues, as well as her failure to access adequate prenatal care, but failed to protect [D.C.], placing the infant at a substantial risk of serious physical harm in his care.

"b-3: [D.C.] is at substantial risk of suffering serious physical harm in the care of [Mother] and [Father], to wit, [Mother] and [Father] have engaged in ongoing domestic violence. Between on or about May 13, 2018, and June 8, 2018, law enforcement intervened on at least four separate occasions. On or about May 13, 2018, the alleged father punched the mother, who was around five months pregnant, multiple times in the stomach, and damaged the mother's car so that the passenger door would not close."

The section 300, subdivision (c) count alleged D.C. was at substantial risk of suffering serious emotional damage in Mother's care because "on or about August 24, 2018, the mother, in the presence of the infant, engaged in uncontrolled emotional outbursts which went on all night long. The mother screamed and verbally abused staff who were caring for the infant, in spite of efforts by staff to get her to stop. At one point the mother called law enforcement and claimed the hospital had kidnapped the infant."

Under section 300, subdivision (j), the petition alleged that "[o]n or about April 26, 2017, a Petition was filed under Section 300(b) of the Welfare and Institutions Code on behalf of the infant's maternal half-siblings due to the severe untreated mental health issues of [Mother], which prevented the mother from being able to safely care for the half-siblings. On or about September 28, 2017, the half-siblings were declared Dependents of the Sonoma County Juvenile Court. . . . The mother was bypassed for services under Section 361.5(b)(2) of the Welfare and Institutions Code. On or about January 18, 2018, legal guardianship was established on behalf of the infant child's maternal half-siblings, and further Dependency proceedings were dismissed."

The allegations of the petition were sustained after a jurisdictional hearing.

Disposition

The Department's status report for the February 21, 2019 disposition hearing recommended the court adjudge D.C. a dependent child and offer Mother family reunification services. The Department had concerns about Mother's homelessness and violent relationship with Father, but Mother had secured a housing voucher, was no longer involved with Father, and reported she was not involved with any other men. The more troubling issues concerned Mother's mental health, including a diagnosis of schizophrenia during her earlier dependency case, her inability to control her anger and her pattern of engaging in raging and ranting behaviors.

The Department arranged for psychologist Andrea Shelley to conduct a psychological evaluation. Dr. Shelley noted that although Mother had some neuropsychological deficits, she did not meet the criteria for schizophrenia because Mother was " 'cognitively organized and able to speak in a succinct manner.' " She believed Mother's deficits were likely due to in utero drug exposure and a concussion sustained as a teenager. Dr. Shelley opined that Mother's behavior did not rise "'to the point of delusions or paranoia of a psychotic disorder but rather behavior as a result of lack of coping mechanisms.' " Mother's circumstances had changed since previous evaluations in that she now had housing, full-time work, and was not involved with a man. Dr. Shelley believed Mother could benefit from reunification services and recommended that she return to therapy with Diane Holloway under dialectical behavior therapy (DBT) " 'to help with distress tolerance, cognitive restructuring, and interpersonal effectiveness.' " In light of Dr. Shelley's diagnosis and Mother's acceptance of her treatment recommendations, the Department was "hopeful that she will be successful in reunifying."

D.C.'s counsel submitted several psychological evaluations of Mother in opposition to the Department's recommendation for reunification services at the start of the disposition hearing on March 12, 2019. In a March 11, 2010 report prepared for half-sibling Leon's dependency case, Dr. Gloria Speicher diagnosed Mother with Paranoid Personality Traits "with the caveat and instruction to mental health professionals that

work with her subsequently, to continue to rule out Paranoid Personality Disorder. While [Mother] currently appears to meet the criteria for Disorder, the evaluation was somewhat compromised by her lack of cooperation." Dr. Speicher noted that Mother was poorly motivated for treatment, had extremely limited insight, and did not demonstrate an ability to connect her decisions and behavior to their predictable consequences. Mother did not indicate a strong concern or ability to perceive the effect of her behavior on others, projected blame onto others and had difficulty questioning her part or responsibility in her circumstances.

Dr. Speicher opined that Leon would not be safe in Mother's care until she was able to understand her personal responsibility and participation in domestic violence. She recommended a medication evaluation to consider the usefulness of psychopharmacologic treatment and Mother's participation in a domestic violence group, individual psychotherapy to include supportive interventions, behavior modification techniques and cognitive reframing.

Dr. Lovingly Quitania Park evaluated Mother in September 2017 in conjunction with dependency proceedings concerning her two younger sons, then 18 months and two months old. Mother presented with a cluster of symptoms associated with schizophrenia, i.e., delusions, disorganized thinking, and paranoia, of relatively mild to moderate severity. Although schizophrenia can be effectively managed with medication, "initiation of treatment and medication compliance requires a certain level of insight and self-awareness that [Mother] is lacking. It usually requires at least 6 months to 1 year of stability before any significant gains can be observed from treatment and it appears unfortunately, that [Mother] has not been able to achieve this period of stability as an adult." Until Mother could actively participate in her treatment, "[she] is not likely to be able to care for her children independently and will not likely benefit from services until she is more psychiatrically stable. She needs to be stabilized in order to engage in minimally adequate parenting since the degree of disorganization and delusional ideation she is experiencing, combined with her functional impairment, prevents her from providing the children with their basic needs."

Dr. Barbara Prosniewski evaluated Mother in August 2017 also for her two younger sons' dependency case. She observed that Mother "is not emotionally stable, or anywhere close to it." Mother "presents frequently with pressured speech, tangential thinking, manic like grandiose plans, illogical volatility and persecutory delusions. Her thinking is as flawed as the conclusions that she comes to. They don't often make sense and then she feels further misunderstood and plotted against. . . . [¶] When emotionally escalated, [Mother] shows little proof of being [able] to use what she learned in the 52 week anger management class that she allegedly took, especially in terms of recognizing her own anger, the triggers for her anger and how to constructively deal with this very powerful emotion. Given her own intra-uterine drug exposure, there may very well be a neurological component to what seems like a deficit in executive functioning." Dr. Prosniewski diagnosed Mother with Generalized Anxiety Disorder, Delusional Disorder, Persecutory type, mild Cannabis Use Disorder, Unspecified Personality Disorder (Turbulent) Type, Histrionic Personality Style and Compulsive Personality Style. She believed that Mother was not amenable to utilizing the treatment she needed and, even if she were, "the treatment would most likely take much longer than the statute allows. So therefore, this examiner feels that she does qualify for a bypass of services."

On March 5, 2019, Dr. Speicher submitted a second report addressing Dr. Shelley's assessment and whether Mother's circumstances had sufficiently changed since the prior bypass of services in late 2017 such that she could now benefit from them. Dr. Speicher had attempted to meet with Mother for an updated evaluation, but Mother did not keep her first appointment and subsequently refused to meet.

Dr. Speicher wrote a detailed critique of Dr. Shelley's evaluation. She said that Dr. Shelley failed to present psychological evidence refuting the concerns raised by other psychologists; provided no information addressing or explaining Mother's current circumstances in relation to her extensive history of mental illness; did not indicate any exploration into whether there were changes in Mother's insight and understanding of the issues that led to her past problematic behaviors and situations; failed to offer any specific diagnoses for which treatment would be relevant; and failed to address the

difference between her opinion (based on no testing) and the results presented as a result of extensive testing in the other reports. "In summary, Dr. Shelley's report provides no evidence or indications of change of circumstances that would have been observed to occur over an extended period of time that would indicate a consolidated change of behaviors that gave rise to concerns about [Mother's] level of functioning with regard to cognitive dysfunction or mental illness and subsequent impact on parenting."

Dr. Speicher also disagreed with Dr. Shelley's view that DBT could effectively mitigate Mother's deficits to a degree that would allow her to reunify within six months. Research on DBT employing an intensive treatment protocol has demonstrated improvement in symptoms of Borderline Personality Disorder, but Mother was not engaged in such a protocol and none of her psychological evaluations indicated a diagnosis of Borderline Personality Disorder. Moreover, effective treatment would take longer than six months. Dr. Speicher opined: "[t]he amount of time required [for Mother] to demonstrate consistent change and consolidation of learned behaviors as a result of treatment with DBT is expected to be longer than allowed by the statutes. Additionally, it is not likely that DBT will result in *dramatic* change with regard to some of the functional impairments stated by Dr. Park."

On April 9, 2019, Dr. Shelley informed the Department that she had reviewed Dr. Speicher's updated report and was changing her recommendation.[2] Dr. Shelley wrote,

[2] We grant the Department's July 12, 2019 request for judicial notice of (1) the Department's April 15, 2016 Addendum Report attaching Dr. Shelley's April 9, 2019 letter; and (2) the court's June 11, 2019 findings and orders from the May 10, 2019 disposition hearing. We deny the Department's accompanying motion to dismiss Mother's writ petition for failure to comply with California Rules of Court, rule 8.452. Mother's petition so thoroughly ignores the minimum requirements for a petition seeking writ review of orders setting permanency planning hearings that this court could, and some courts no doubt would, dismiss or summarily deny the petition on that basis alone. (See *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.) Because the record in this case is concise enough for this court to review it without assistance from Mother's counsel and given the gravity of Mother's interest in her parental relationship with D.C., we decline to take that step. We caution counsel, however, that such palpably deficient

"Based on my review of the most [recent] evaluation of [Mother] by Gloria Speicher, Ph.D. on 3/5/19 and careful consideration I have changed my opinion regarding [Mother]. Due to her severe mental illness condition along with the chronicity I do not believe another six months of services would be effective." Based on Dr. Shelley's new opinion, the Department changed its position and recommended that Mother be bypassed for services and a section 366.26 hearing be set.

When the disposition hearing continued on April 16, therapist Holloway testified that she had been treating Mother since 2015. She had never seen Mother exhibit behaviors consistent with schizophrenia, such as hallucinations or psychotic episodes, or bipolar disorder. She thought Mother suffered from emotional dysregulation with possibly an element of borderline personality disorder. That is why she recommended DBT to help with emotional regulation. Holloway also suspected Mother might be suffering from Post-Traumatic Stress Disorder due to sexual assault and domestic violence.

Holloway had recently completed online training on a neurofeedback treatment technique called LENS, which she felt could help with Mother's ability to learn from experience. She believed "it might be that it would be much better for her to have this treatment before she does the dialectical behavioral therapy group because if she hasn't got the capacity to retain these things, it's not gonna help." But, "it's hard to say how long it would take" to see results from the treatment.

At the continued hearing on May 10, 2019, the parties stipulated that "on or about June 13th of 2018 mother's Social Security was denied, and it is SSI." Mother offered into evidence a May 9, 2019 email exchange between Mother's attorney and Dr. Prosniewski. Dr. Prosniewski wrote: "Thank you for the update. I'm glad that Dr. Shelley rescinded her recommendation as her conclusions did not seem to take into account what she had written in her report, specifically that [Mother] stated that she was not going to change her behaviors. I have read both Dr. Parks and Dr. Shelley's evals

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representation in future cases may well produce grave consequences for her dependency clients.

recently as [D.C.'s counsel] had called me for an opinion about them, actually more specifically, Dr. Shelley's." Dr. Prosniewski confirmed that she had not seen Mother since she evaluated her in 2017.

Responding to counsel's request that Dr. Prosniewski comment on Dr. Park's diagnosis of schizophrenia, Dr. Prosniewski wrote: "it's a bit like splitting hairs. Dr. Park based her conclusions on [Mother's] delusions, disorganized thinking and paranoia. Usually with schizophrenia there are also hallucinations. My diagnoses of Generalized Anxiety Disorder; R/O Bipolar Disorder, Severe with Psychotic Features; Delusional Disorder, Persecutory Type, to me, seems to fit better. But the bottom line is the treatment recommendations wind up being pretty much the same, i.e. medication and the same medications, as in the antipsychotics which can also act as mood stabilizers. This would need to be the first line of treatment as this poor woman can't get out of her own way." Dr. Prosniewski was "glad to hear that [Mother] is doing better. I would love to believe that this new [brain stimulation treatment] system is what truly helps her. However, given her longstanding history of psychotic thinking and paranoia, I remain skeptical of her ability to make and maintain this sudden shift in her behavior and functioning."

Mother's case worker testified that Mother was participating in services and doing well with visits. She did not get into therapy with a therapist who specialized in DBT, but had recently resumed therapy with Holloway and regularly attended her sessions. The case worker also disclosed that Mother was asked to leave her housing program the night before the hearing. She explained, "I hear different stories from [Mother] versus the housing person. It sounds like there was a conflict with someone else in the home. I don't know that [Mother] initiated that, but when they tried to have a kind of a mediation, she would not participate in that." The case worker was told that Mother "sent several texts to the . . . case manager for that program, [who] felt threatened or found them threatening, felt she would be scaring the other residents and made her leave." The court also heard testimony from Mother and parent educator Maria Rivera.

After argument by counsel, the court found by clear and convincing evidence that Mother suffers from a mental disability that renders her incapable of utilizing reunification services and that she was unlikely to be able to care for D.C. within the maximum reunification period. Accordingly, it found bypass was appropriate, ordered that reunification services would not be provided and set a permanency planning hearing for August 21, 2019.

Mother filed a timely petition under California Rules of Court, rule 8.452.[3]

DISCUSSION

With certain exceptions, when a child is removed from parental custody the juvenile court is required to provide reunification services to the parents. (§ 361.5, subd.(a).) Section 361.5, subdivision (b)(2) is one such exception and allows the court to bypass reunification services if it finds by clear and convincing evidence that "the parent or guardian is suffering from a mental disability . . . that renders him or her incapable of utilizing those services." " 'Mental disability' " in this context means 'that a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately.' [Citation.] 'When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).' [Citation.]" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.)

Section 361.5, subdivision (b)(2) incorporates the requirement specified in Family Code section 7827, subdivision (c) that a finding of mental disability be supported by " 'the evidence of any two experts,' " each of whom must be a psychiatrist or psychologist meeting educational and experience requirements. (*In re C.C.* (2003) 111 Cal.App.4th 76, 83-84.) But "there is no requirement that both experts must agree a

[3] Father has not filed a petition for an extraordinary writ.

parent is unlikely to benefit from services before the court may deny the parent services. Instead, the statute requires a showing only of evidence proffered by both experts regarding a parent's mental disability, evidence from which the court then can make inferences and base its findings." (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474 (*Curtis F.*).)

We review the juvenile court's denial of reunification services under section 361.5, subdivision (b)(2) for substantial evidence. (*Curtis F., supra,* 80 Cal.App.4th at p. 474.) We decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence. (*Ibid.*) In making this determination we do not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) "The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts." (*Ibid.*)

Mother argues the court's ruling is unsupported by sufficient evidence because, in her view, Dr. Speicher's and Dr. Prosniewski's reports were "stale." The trial court had ample reason to disagree. Particularly in light of Mother's longstanding history of chronic mental illness, the court reasonably rejected Mother's view that earlier evaluations were no longer valid. In addition, both Dr. Speicher and Dr. Prosniewski updated the information confirming their original determinations. In March 2019, Dr. Speicher submitted her new report addressing specific case developments, including the 2017 evaluations by Drs. Prosniewski and Park. She found (1) no evidence to "indicate a consolidated change of the behaviors that gave rise to concerns about [Mother's] level of functioning with regard to cognitive dysfunction or mental illness and subsequent impact on parenting;" and (2) no likelihood the DBT treatment proposed by Mother could enable her to care for D.C. within the six-month statutory reunification period. In May 2019, Dr. Prosniewski wrote that "given [Mother's] longstanding history of psychotic thinking and paranoia, I remain skeptical of her ability to make and maintain this sudden shift in her

behavior and functioning." Even Dr. Shelley, who initially opined that Mother could benefit from reunification services, believed the earlier evaluations by Drs. Prosniewski and Park were sufficiently current to use for her evaluation and in April 2019 changed her assessment to reach the same conclusion as the other psychologists. Ample evidence supports the court's decision to bypass reunification services pursuant to section 361.5, subdivision (b)(2).

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (See § 366.26, subd.(l); see *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b).)

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Siggins, P.J.

WE CONCUR:

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Fujisaki, J.

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Petrou J.